

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 20-cv-00977-PAB-MEH

THOMAS CARRANZA, et al.

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL EVIDENCE AND AUTHORITY IN
SUPPORT OF PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF (ECF DOC. 1)**

Plaintiffs, through undersigned counsel, respectively submit the following Notice of Supplemental Evidence and Authority in Support of Plaintiffs' Request for Injunctive Relief (ECF Doc. 1) as follows:

I. Supplemental Evidence

On the night of Tuesday April 7, 2020, Plaintiffs moved for an emergency order that the Weld County Jail ("WCJ") must provide inmates who are at high-risk of serious illness or death from COVID-19 with constitutionally adequate protection from infection with the virus. ECF Doc. 1. New evidence pertinent to this Court's consideration of Plaintiffs' motion for injunctive relief has come to light. Most importantly, the number of positive cases of COVID-19 in the Weld County Jail has increased. As of the day of the filing, the most recent news coverage reflected that WCJ had one inmate who had tested positive for COVID-19.¹ By Friday, April 10,

¹ Reid, Trevor, Greeley Tribune, *Weld County Jail inmate, 4 employees test positive for COVID-19*, Apr. 1, 2020, available at <https://www.greeleytribune.com/news/weld-county-jail-inmate-several-employees-test-positive-for-covid-19/> (last viewed April 13, 2020).

2020, Plaintiffs' counsel learned directly from WCJ staff that there were fourteen inmates who they had identified as positive for COVID-19, including six inmates with positive tests and eight inmates who were presumed positive based on symptoms. A fifteenth person had tested positive but had been transferred to the hospital. Additionally, in the six days since Plaintiffs filed their motion, deaths in Weld County resulting from COVID-19 have continued to increase. With 48 deaths, Weld County now has the largest number of COVID-19 related deaths in the state, surpassing Denver.²

Since last week's filing, Plaintiffs' counsel has learned that just two days after his release from the Weld County jail, an inmate died from COVID-19 complications. **Exhibit 1, Cheryl Cook Declaration.** Charles Peterson, the inmate who died, was a 78-year-old man who had spent about 20 days in WCJ on a parole hold before he was released gravely ill with COVID-19. **Ex. 1, pp. 1-2.** WCJ released Mr. Peterson who had been exhibiting symptoms while in jail, without informing the people who picked him up and shared a home with him that he was sick. **Ex. 1, pp. 2-3.** Mr. Peterson barely made it to his home before an ambulance had to be called. **Ex. 1, p. 2.** He died of complications from COVID-19 two days later. **Ex. 1, p. 2.** Mr. Peterson's tragic story underscores the unreasonable risk of serious harm that the medically vulnerable Plaintiffs class face in the Weld County Jail.

Also since last week's filing, numerous people incarcerated in the Weld County Jail have stepped forward to share the reality of the dire conditions within the jail that made WCJ ripe for the current COVID-19 outbreak. For instance, two recently released individuals who were trustees describe openly sick inmates being required to work in the kitchen, widespread failures

² See *COVID-19 Case Data*, COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT, <https://covid19.colorado.gov/case-data> (last viewed April 13, 2020).

to follow CDC guidelines, and failures to provide basic information to inmates about the virus and its spread within the jail. **Exhibit 2**, *Declaration of Christopher Vecchiarelli*; **Exhibit 3**, *Declaration of Ralph Brewer*.

While conditions in WCJ have improved recently, medically vulnerable inmates continue to be held in lockdown status in cells with other people who have likely been exposed to the virus. As new evidence shows, in these cells, where inmates spend 23 or more hours a day, physical distancing is impossible even with the recent changes made by WCJ. **Exhibit 4**, *Declaration of Thomas Lewis*; **Exhibit 5**, *Declaration of Helen Griffith*. Further, WCJ has not sought to interview inmates to identify who is medically vulnerable or to give those inmates single cells. **Ex. 4**, p. 2; **Ex. 5**, p. 3. As a result, medically vulnerable inmates, including Plaintiffs, are not able to practice the physical distancing that has the greatest chance of protecting them from infection and, ultimately, death.

II. Supplemental Authority

Since this case was filed, courts have continued to issue rulings that recognize the dire need for emergency action by courts, including by releasing incarcerated people who face a heightened risk of serious illness or death if they become infected. These courts openly recognize that the judiciary must act now or people will die.

1. *Swain, et al. v. Junior, et al.*, Case No. 20-cv-21457, Doc. 25 (S.D. Fla. Apr. 5, 2020). – **Exhibit 6**.

On April 4, 2020, a group of inmates in the Miami-Dade Jail filed a class action lawsuit seeking the immediate release of all incarcerated people who, like the putative Plaintiffs' class in the instant case, face a heightened risk of serious illness or death if they contract COVID-19. *Swain, et al. v. Junior, et al.*, Case No. 20-cv-21457 (S.D. Fla. Apr. 5, 2020). Two days later, on

April 7, the court issued a temporary restraining order requiring the jail to produce a list to the court of all medically-vulnerable inmates and to take numerous actions within the jail to come into compliance with public health recommendations, including social distancing. **Ex. 6**, p. 2. In granting this temporary relief, the judge did not hold a hearing and instead “accepted the allegations in the Complaint and its attachments as true without briefing or evidentiary submissions by the Defendants,” and noted “this Order does not make a finding of wrongdoing on the part of any defendant and no defendant has waived any defenses to this action.” *Id.*, at 5. With this temporary protection in place, the court set a briefing schedule for the preliminary injunction hearing now set for April 21. *Id.*

2. *New York v. Brann, et al.*, Index No. 451078/2020 (Sup. Ct, N.Y. County Apr. 6, 2020) – Exhibit 7

On April 6, 2020, the Supreme Court of New York County issued an order releasing eighteen medically vulnerable pretrial detainees held at Rikers Island, because their continued incarceration in the facility, which had a known COVID-19 outbreak, violated the Due Process Clause. **Ex. 7**. The court explained:

Covid-19 is at large at Rikers Island. The current epidemic poses a deadly threat to inmates, and its presence at the prison equates to an "unsafe, life-threatening condition" endangering "reasonable safety." *See Helling v. McKinney*, 509 US at 33, *supra*. Given such circumstances and the absence of a viable alternative, a court has no choice but to order release. *Brown v. Plata*, 563 US at 511, *supra*.

Id., at 4. Several of the individuals had been accused of serious, violent crimes, and the court found such accusations could not justify placing these individuals at “substantial risk of death or other serious physical injury.” *Id.*, at 9. The court also noted that, “it is critically important to remember that petitioners have been convicted of nothing. They instead face contested charges.” *Id.*, at 6.

In finding that the jail officials had failed to take “reasonable care” to mitigate the risk posed by COVID-19 to these medically vulnerable inmates, the court underscored that it “does not at all question the good faith of the Rikers officials.” *Id.*, at 7. Still, the court concluded that the magnitude of the risk required release:

Due process does not excuse prison officials who mean well, but have no effective way to protect inmates from potentially fatal epidemics. Again, prison officials are obliged to take “reasonable care” to mitigate the risk posed by Covid-19. That is so especially for prisoners who can fairly expect extremely serious consequences if they contract the disease. “Reasonable care” and “mitigation” obligations are not satisfied by tossing a bucket of water on a four-alarm house fire, or by placing a band-Aid on a compound bone fracture. Reasonable care to mitigate must include an effort to employ an *effective* ameliorative measure. As would be expected when the Department of Corrections' own doctors ask for release, the escalating numbers of the infected show that what Rikers has done is not remotely effective. Prisoners with dangerous conditions are dramatically at risk. For some of them, only release can offer protection.

Id., at 7-8.

The court took this emergency action without waiting for a comprehensive evidentiary hearing, recognizing that the current reality of the COVID-19 public health crisis requires courts to take protective action immediately, *before* such action risks being mooted out by serious illness or death:

These are not normal times. Courthouses are almost completely closed. Staffing is short — judges, court officers, court reporters, clerks, and IT employees. The ability of Rikers Island officials to arrange internet conferences with inmates is very limited. Medical records are not available. Expert medical witnesses are, to say the least, occupied. But the claims of these petitioners, and hundreds of other inmates who believe they are in immediate danger, deserve to be treated as emergency questions for courts and other officials who can grant release. Perhaps two months from now, when the disease has abated, the courtrooms will reopen, weeks can be spent marshaling evidence, and cross-examinations can be conducted. But there is no time to wait — the issues will be moot. The court's conclusions about inmate conditions had to be based on the records available to the parties, the lawyers' phone calls to busy experts, work on the internet, and Skype conversations held in the absence of affected petitioners.

Id., at 8-9.

3. *U.S. v. Plunk*, Case No. 94-cr-0036 (D. Alaska Apr. 9, 2020) – **Exhibit 8**

On April 6, 2020, the Alaska federal district court ordered compassionate release of a federal prisoner who is older and suffers from serious underlying health conditions. “The Court finds that COVID-19 presents a clear and present danger for individuals who are in custody. If COVID-19 reaches Defendant’s custodial facility, his ability to follow recommended self-care and public health guidance is substantially diminished by the restrictions inherent to his environment.” **Ex. 8**, p. 8.

Dated: April 13, 2020

Respectfully submitted,

s/ Andy McNulty

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2020, I electronically filed the foregoing **PLAINTIFFS' NOTICE OF SUPPLEMENTAL EVIDENCE AND AUTHORITY IN SUPPORT OF PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF (ECF DOC. 1)** with the Clerk of the Court using the CM/ECF system which will send notification to the following counsel.

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